



NOTICES OF FINAL EXEMPT RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Exempt Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the final exempt rule should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

PREAMBLE

[R15-23]

1. **Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
R9-22-730 Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:**
Authorizing statute: A.R.S. § 36-2901.08
Implementing statute: A.R.S. § 36-2901.08
Statute or session law authorizing the exemption: A.R.S. § 41-1005(A)(32) exempts the Administration from Title 41, Chapter 6 of the Arizona Revised Statutes
3. **The effective date of the rule and the agency's reason it selected the effective date:**
April 15, 2015. This date aligns with the date that invoices to hospitals will be issued reflecting the updated amounts of the hospital assessment for the quarter beginning April 1, 2015.
4. **A list of all notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**
Notice of Proposed Exempt Rulemaking: 21 A.A.R. 491, April 3, 2015
5. **The agency's contact person who can answer questions about the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov
Website: www.azahcccs.gov
6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**
A.R.S. § 36-2901.08 authorizes the Administration to establish, administer and collect an assessment on hospital revenues, discharges or bed days for funding a portion of the nonfederal share of the costs incurred beginning January 1, 2014, associated with eligible persons added to the program by A.R.S. §§ 36-2901.01 and 36-2901.07. It is the agency's objective to assess only so much as is necessary to meet the estimated costs associated with the projected populations referenced in the statute. As such, it is necessary for the Administration to adjust the assessment from time to time as the Administration obtains new information to update estimations of the number of eligible persons and projections of the costs anticipated to provide coverage for those persons. The Administration is proposing a new rule to update the figures to be used as of April 1, 2015 for collecting the assessment on hospitals.

Laws 2013, 1st Special Session, Chapter 10 added an exemption to the Administrative Procedure Act for purposes of the administration and implementation of the hospital assessment:

A.R.S. § 41-1005 (A)(32) exempts the Administration from Title 41, Chapter 6 of the Arizona Revised Statutes (the Arizona Administrative Procedure Act) for purposes of implementing and establishing the hospital assessment; however, that



provision requires the Administration to provide public notice and an opportunity for public comment at least 30 days before doing so.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Information regarding the Administration's estimations of the number of eligible persons described in A.R.S. § 36-2901.01, and the associated cost of care for those persons, is included in the Administration's State Fiscal Year budget submittal which is available for inspection at the offices of the Administration and the Governor's Office of Strategic Planning & Budget.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The summary of the economic, small business, and consumer impact, if applicable:

The Administration had previously estimated that \$233 million would need to be collected from Arizona hospitals to fund the cost required by statute for State Fiscal Year ending June 30, 2015. To date, the Administration has collected about \$175 million in assessments for the current state fiscal year. Based on more current information, the Administration estimates that \$270 million will be needed for the costs associated with the State Fiscal year ending June 30, 2015. To ensure that adequate funds are collected through the assessment to cover the anticipated costs for the current fiscal year, the Administration is adjusting the rates applicable to the quarterly assessment.

The Administration will continue to review enrollment data to update its estimates of future fiscal requirements. At this time, the Administration anticipates that it will be issuing a separate rule amendment in the future to revise the rates for the assessments that will be invoiced after the quarter ending June 2015.

The AHCCCS program is jointly funded by the State and the federal government through the Medicaid program. Depending on the eligibility category of the individual, the federal government provides approximately two-thirds, 85%, or 100% of the cost of care for persons described in A.R.S. § 36.2901.08(A). The Administration will use the amounts collected from the assessment combined with the federal financial participation to fund the cost of health care coverage for an estimated 360,000 persons described in A.R.S. § 36.2901.08(A) through direct payments to health care providers and capitation payments to managed care organizations that, in turn, make payments to health care providers that render care to AHCCCS members. Many of the providers of that medical care are considered small businesses located in Arizona. A.R.S. § 36-2901.08 prohibits the assessed hospitals from passing the cost of the assessment on to patients or third parties who pay for care in the hospital. In the aggregate, the Administration expects to return millions more in State Fiscal Year 2015 in incremental payments for hospital services than will be collected through the assessment. Along with a copy of this proposed exempt rule making, the Administration has posted to its website information regarding the fiscal impact of this amendment. <http://www.azahcccs.gov/reporting/state/proposedrules.aspx>

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

No changes were made between the proposed rulemaking and the final rulemaking.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

No comments were made by the close of the comment period April 13, 2015

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

None

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material and its location in the rule:

None



14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION**

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-730. Hospital Assessment

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-730. Hospital Assessment

- A.** For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:
1. "2011 Medicare Cost Report" means:
 - a. The Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated December 31, 2012; or
 - b. For hospitals not included in that CMS HCRIS report, the "as filed" Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 submitted by the hospital to the Administration.
 2. "2011 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of December 19, 2012.
 3. "2012 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of August 2, 2013.
 4. "Quarter" means the three month period beginning January 1, April 1, July 1, and October 1 of each year.
- B.** Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period ~~of July 1, 2014 through June 30, 2015~~ beginning April 1, 2015, the assessment shall be calculated by multiplying the number of discharges reported on the hospital's 2011 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges" by the following rates based on the hospital's peer group:
1. ~~\$387.00~~ \$635.00 per discharge for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
 2. ~~\$387.00~~ \$635.00 per discharge for hospitals designated as type: hospital, subtype: critical access hospital.
 3. ~~\$96.75~~ \$158.75 per discharge for hospitals designated as type: hospital, subtype: long term.
 4. ~~\$96.75~~ \$158.75 per discharge for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2011 Medicare Cost Report.
 5. ~~\$309.00~~ \$508.50 per discharge for hospitals designated as type: hospital, subtype: short-term with 20% ~~or more~~ of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2012 Uniform Accounting Report.
 6. ~~\$348.25~~ \$571.25 per discharge for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2012 Uniform Accounting Report.
 7. ~~\$387.00~~ \$635.00 per discharge for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C.** Peer groups for the four quarters beginning July 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website March 1, 2013.
- D.** Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2011 Medicare Cost Report, are assessed a rate of ~~\$96.75~~ \$158.75 for each discharge from the psychiatric sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E.** Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2011 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F.** Notwithstanding subsection (B), for any hospital that reported more than 29,000 discharges on the hospital's 2011 Medicare Cost Report, discharges in excess of 29,000 are assessed a rate of ~~\$38.75~~ \$63.75 for each discharge in excess



- of 29,000. The initial 29,000 discharges are assessed at the rate required by subsection (B).
- G. Assessment notice. On or before the 15th day of the quarter, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.
 - H. Assessment due date. Assessment must be received by the Administration by the 15th day of the second month of the quarter.
 - I. Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2011 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March 1, 2013:
 - 1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
 - 2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
 - 3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2011 Medicare Cost Report.
 - 4. Hospitals designated as type: hospital, subtype; rehabilitation.
 - 5. Hospitals designated as type: hospital, subtype: children's.
 - 6. Hospitals designated as type: med-hospital, subtype: special hospitals.
 - 7. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
 - J. New hospitals. For hospitals that did not file a 2011 Medicare Cost Report because of the date the hospital began operations, the hospital assessment will begin with the hospital's second quarter of operation but no sooner than January 1, 2014. The assessment will be based on the number of discharges reported by the hospital to AHCCCS for prior quarters until the hospital files its initial Medicare Cost Report. Thereafter, the assessment will be based on the discharges reported in the hospital's initial Medicare Cost Report.
 - K. Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
 - L. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
 - M. Required information. For any hospital that has not filed a 2011 Medicare Cost report, or if the 2011 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the assessment, the Administration shall use data reported on the 2011 Uniform Accounting Report filed by the hospital in place of the 2011 Medicare Cost report to calculate the assessment. If the 2011 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2011 Medicare Cost report to calculate the assessment.
 - N. The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in 36-2901.08.
 - O. Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

[R15-27]

PREAMBLE

- | | |
|---|--|
| <p><u>1. Article, Part or Section Affected (as applicable):</u>
R19-2-205</p> <p><u>2. Citations to Agency's statutory rulemaking authority to include authorizing statute (general) and the implementing statute (specific) and the statute or session authorizing the exemption:</u>
 Authorizing statute: A.R.S. § 5-104(A)(2), Laws 2011, Ch. 35 § 10(B)
 Implementing statute: A.R.S. §§ 5-104(F), 5-104(R), 5-113.01, 5-230
 Authorizing Exemption: Fifty First Legislature, Second Regular Session, 2014</p> | <p><u>Rulemaking Action</u>
Amend</p> |
|---|--|



Senate Bill 1487, Section 3. Racing and Boxing fees, Increase, Rulemaking Exemption:

A. The Arizona Department of Racing is exempt from the rulemaking requirements of Title 41, Chapter 6, Arizona Revised Statutes, for the purpose of increasing fees pursuant to §§ 5-104 and 5-230, until July 1, 2015.

3. The effective date of the rule and the agency's reason it selected the effective date:

April 20, 2015 (upon filing with the Secretary of State).

From time to time, the Department of Racing reviews its major source of income, the Regulatory Wagering Assessment (RWA). In the latest review, a determination was made that income from this source would leave the agency with a shortfall of approximately \$486,000 at the end of this fiscal year, June 30, 2015. Due to the projected shortfall of revenues this fiscal year, the Department believes it is necessary to increase the RWA from 0.60% to 0.85% to help carry it through the remainder of fiscal year 2015 and into fiscal year 2016. This increase should be done as soon as practicable to ensure continued, effective, regulation of the racing industry as mandated by law.

4. A list of all notices published in the Register as specified in R1-1409(A) that pertain to the record of the exempt rulemaking:

None

5. The agency's contact person who can answer questions about the rulemaking:

Name: Rudy J. Casillas, Interim Director

Address: Arizona Department of Racing
1110 W. Washington, Suite 260
Phoenix, AZ 85007

Telephone: (602) 364-1725

Fax: (602) 364-1703

E-mail: rcasillas@azracing.gov

Website: www.azracing.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:

Periodically, the Department of Racing reviews its major source of income, the Regulatory Wagering Assessment (RWA). In the latest review, a determination was made that income from this source would leave the agency with a shortfall of approximately \$486,000.00 at the end of this fiscal year, June 30, 2015. Due to the projected shortfall of revenues this fiscal year, the Department believes it is necessary to increase the RWA from 0.60% to 0.85% to help carry it through the remainder of fiscal year 2015 and into fiscal year 2016.

The current RWA assessment rate of 0.60% along with the other Department revenue streams for fiscal year 2015 is projected to generate \$2.4m in total revenues. However, Department expenditures are projected to total \$2.89m for the fiscal year. The Arizona Racing handle, upon which the RWA is based, has decreased by 14.7% this fiscal year to date and is projected to continue to drop by the same amount for the remainder of the year.

In order for the Department to meet its mission and goals of effectively regulating the racing industry, the RWA must be increased to 0.85 percent. In the event that the RWA is not increased to a sufficient level, the Department will be forced to implement a Reduction in Force (RIF) or furlough several Department employees through the remainder of the fiscal year to off-set the revenue shortfall. Additionally, the Department will be forced to limit travel, cut purchasing of office supplies and equipment. Department furloughs cause significant concerns as the industry would operate with very limited oversight by the Department. Significant administrative backlogs would develop in providing due process regarding licensee and permittee infractions and in the conduct of hearings requested by appellants. Furthermore, the revenue shortfall places the Department at financial risk beginning fiscal year 2016, as the primary revenue inflow does not commence until November 2015.

The Department of Racing is initiating this exempt rulemaking to comply with the requirement that the Department collects fees in the amount necessary to support the Department's mission under the requirements of Laws 2011, Ch. 35. §10(B).

Additionally, On March 12, 2015, Governor Ducey signed SB1480 "Agency Consolidation: Budget Reconciliation 2015-2016" consolidating the Arizona Department of Racing (ADOR) into the Arizona Department of Gaming (ADG). This agency consolidation will take effect July 1, 2015. As a result of the budget constraints and the agency consolidation, ADOR has entered into an Interagency Service Agreement (ISA) with the Arizona Department of Gaming (ADG) in an effort to reduce costs and transition several administrative duties. The (ISA) will assist both agencies, ensuring a seamless transition and maintain a high level of customer service.



After the agency consolidation, the Division of Racing will continue to be funded by the racing industry and will continue to have its own stand-alone budget.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
None
8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
Not applicable
9. The summary of the economic, small business, and consumer impact, if applicable:
The economic impact of this rule amendment will have an effect on the Permittees holding racing meetings within the State of Arizona. The Regulatory Wagering Assessment percentage is taken from the pari-mutuel wagering pools of the tracks hosting race meetings. All monies wagered by patrons on horse, harness or dog races is computed in the amount of money wagered for each racing day, which this percentage increase will ultimately decrease the Permittees net profits. Conversely, the RWA percentage increase will provide the Arizona Department of Racing with additional revenues for the remainder of fiscal year 2015 and into fiscal year 2016 to regulate the racing industry.
10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package if applicable:
None
11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:
None
12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not limited to:
 - a. Whether the rule requires a permit, whether a general permit is used and if not, the reason why a general permit is not used:
Not applicable
 - b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
Not applicable
 - c. Whether a person, submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:
No
13. A list of any incorporated by reference material and its location in the rule:
None
14. Whether the rule was previously made, amended, repealed, or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:
Not applicable
15. The full text of the rule follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 2. RACING REGULATION FUND

Section
R19-2-205. Regulatory Wagering Assessment of Pari-mutuel Pools

ARTICLE 2. RACING REGULATION FUND

R19-2-205. Regulatory Wagering Assessment of Pari-mutuel Pools

- A. No change
- B. The racing regulation assessment for each racing meeting on all in-state and/or out-of-state, on-track, off-track, live, import and/or export wagers and/or wager types shall be ~~0.60~~ 0.85 percent ~~beginning~~ _____, 2014 ~~through~~



October 31, 2015. Beginning November 1, 2015, the racing regulation assessment for each race meeting on all in-state and/or out-of-state, on-track, off-track, live, import and/or export wagers and/or wager types shall be 0.60 percent.

- C. No change
- D. No change

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

[R15-28]

1. **Article, Part or Section Affected (as applicable):** R19-2-401
Rulemaking Action Amend
2. **Citations to Agency's statutory rulemaking authority to include authorizing statute (general) and the implementing statute (specific) and the statute or session authorizing the exemption:**
Authorizing statute: A.R.S. §5-104(A)(2), Laws 2011, Ch. 35 §10(B)
Implementing statute: A.R.S. §§5-104(F), 5-104(R), 5-113.01, 5-230
Authorizing Exemption: Fifty First Legislature, Second Regular Session, 2014
Senate Bill 1282, Section 9, Exemption from Rulemaking until July 1, 2015.
For the purposes of this act, the Arizona Department of Racing is exempt from the rulemaking requirements of Title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act, except that the department shall file the rules pursuant to Title 41, chapter 6, Arizona Revised Statutes, hold at least one public hearing and file the rules with the secretary of state.
3. **The effective date of the rule and the agency's reason it selected the effective date:**
April 20, 2015 (upon filing with the Secretary of State).

Reason for Effective Date: The existing rule purports to authorize internet gambling which is illegal in Arizona. See, A.R.S. Title 13, Chapter 33, Gambling, A.R.S. § 13-3301 *et seq.* The existing rule must be repealed as soon as is practicable because it contradicts Arizona criminal law.
4. **A list of all notices published in the Register as specified in R1-1409(A) that pertain to the record of the exempt rulemaking:**
None
5. **The agency's contact person who can answer questions about the rulemaking:**
Name: Rudy J. Casillas, Interim Director
Address: Arizona Department of Racing
1110 W. Washington, Suite 260
Phoenix, AZ 85007
Telephone: (602) 364-1725
Fax: (602) 364-1703
E-mail: rcasillas@azracing.gov
Website: www.azracing.gov
6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**
On May 5, 2014, former Governor Jan Brewer signed state advance-deposit wagering (ADW) legislation into law. The ADW legislation (SB 1282), permits betting on horse and Greyhound races by telephone. "Telephone" is defined as "...any device that a person uses for voice communications in connection with the services of a telephone company." The law is intended to make Arizona tracks more competitive with tracks in the 37 other states that already have ADW.

Senate Bill 1282 authorized Advance Deposit Wagering ("ADW") and specifies that the owner of the ADW account may only make an advance deposit pari-mutuel wager by telephone using voice communication. Additionally, the Bill further states, "that this act does not authorize the state to opt in to any Federal law, rule or regulation that allows legalized gaming or to approve or enter into any framework that allows legalized online gaming".

A.R.S. § 5-112. P and Q, respectively state, "The owner of the advance deposit wagering account may make an advance deposit pari-mutuel wager only by telephone" and "Only the advance deposit wagering provider may make an advance deposit wager, pursuant to wagering instructions the owner of the monies issues by telephone."



Neither Senate Bill 1282 nor A.R.S. § 5-112 authorizes the use of the internet, web-based, native applications or hybrid communication mechanisms.

Additionally, on May 5, 2014 Janice K. Brewer, former Governor, authored a letter to Ken Bennett, former Secretary of State, where she indicated that she signed Senate Bill 1282 stating, “that the bill is explicitly clear that Arizona is authorizing advanced deposit wagering and expressly prescribes that the wager must be placed over the telephone. Senate Bill 1282 does not authorize and cannot be construed as authorizing Internet gaming.” She further indicates that, “it is the well-established position of the State that Internet gaming is not authorized in Arizona and, if pursued, the State will steadfastly and aggressively litigate any attempt to commence Internet gaming in Arizona.

On October 1, 2014, the Racing Commission considered and approved new rules implementing the ADW legislation. Rule R19-2-401(11) changed the definition contained in the legislation to read, “Telephone” means Voice over Internet Protocol (VoIP), cellular voice services, Interactive Voice Response (IVR) computer systems and native telephone functionality, but does not include Internet, web-based, or hybrid communication mechanisms.”

On January 30, 2015, the Department of Racing approved the permits of the ADW providers. On February 28, 2015, the Department discovered that one of the ADW providers, based on the new definition of “telephone”, launched an application (“App”) that can be downloaded from the iTunes App Store to an iPhone or tablet with the ability to place on-line wagers. The App has the following capabilities:

- Full betting menu with all runners and riders
- Fast bet functionality to process your bet within two taps
- Handicapping Information
- Presenter Picks and Selections
- Access to wager and bet on over 150 horse racing tracks worldwide
- Live Streaming for all the tracks
- Race Alerts
- Account Management capabilities, such as funding and withdrawal
- Mobile App wagering services available in Arizona

Based on discussions with representatives of the ADW provider, they have clearly admitted that the downloaded App allows users of iPhones and tablets the ability to place racing wagers at Arizona operated race tracks via the internet. As a result of this iPhone and tablet application, other ADW providers have indicated that they will also launch their own mobile phone Apps to also allow internet wagering, based on the new definition of “telephone” contained in Rule R19-2-401(11).

The Department of Racing is responsible for regulating the Advance Deposit Wagering activity and must stop the internet wagering activity immediately. This type of Internet wagering is prohibited in the State of Arizona. A.R.S. Title 13, Chapter 33, Gambling, A.R.S. § 13-3301, does not define Internet gambling as permissible or as a regulated gambling activity. Therefore, the Advanced Deposit Wagering ADW provider is in violation of A.R.S. § 13-3303, Promotion of Gambling, C5F, and A.R.S. § 13-3304, Benefitting from Gambling, C1M.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact, if applicable:

None

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package if applicable:

None

11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

Not Applicable



12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not limited to:

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reason why a general permit is not used:**
Not applicable
- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
Not applicable
- c. Whether a person, submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**
No

13. A list of any incorporated by reference material and its location in the rule:

None

14. Whether the rule was previously made, amended, repealed, or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

None

15. The full text of the rule follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 4. ADVANCED DEPOSIT WAGERING, TELETRACKING, AND SIMULCASTING

Section

R19-2-401. Definitions

ARTICLE 4. ADVANCED DEPOSIT WAGERING, TELETRACKING, AND SIMULCASTING

R19-2-401. Definitions

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. "Telephone" means ~~Voice over Internet Protocol (VOIP), cellular voice services, Interactive Voice Response (IVR), computer systems, and native telephone functionality, but does not include Internet, "web-based, or hybrid communication mechanisms, any device that a person uses for voice communications in connection with the services of a telephone company but does not include digital devices utilizing non-verbal communications.~~
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change